



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MAR 29 2018

Adam Kushner, Partner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

RE: No Action Assurance for the Puerto Rico Electric Power Authority (PREPA)
Emergency Request for Hurricanes Irma and Maria Related Relief

Dear Mr. Kushner:

On March 29, 2018, you requested, on behalf of the Puerto Rico Electric Power Authority (PREPA), an extension of the No Action Assurance (NAA) previously provided for certain Clean Air Act requirements applicable to electric generating units owned or operated by PREPA in Puerto Rico, as the result of the damage caused by Hurricanes Irma and Maria. To address the continuing effects of the hurricanes and to facilitate the restoration of electrical power to Puerto Rico, by this letter EPA is granting the requested extension.

On September 18, 2017, President Donald J. Trump declared that an emergency exists in the Commonwealth of Puerto Rico and ordered Federal assistance to supplement Commonwealth and local response efforts due to the emergency conditions resulting from Hurricane Maria. Hurricane Maria made landfall as a category 4 hurricane with sustained winds up to 155 miles per hour on September 20, 2017. Among other things, the successive hurricanes severely damaged elements of Puerto Rico's electrical generation, transmission, and distribution system. In addition to the President's declaration, Governor Rosselló-Nevares issued Executive Order OE-2017-047 declaring a state of emergency, and the Environmental Quality Board issued Referendum 17-22 (later extended by Referendum 17-31) addressing the electrical and other crises on the island resulting from Hurricane Maria.

In response to the significant damage resulting from Hurricanes Irma and Maria, the EPA has provided relief from certain permit conditions and permitting requirements, including emission limits, hours of operation limits, fuel usage restrictions, and restrictions on the shutdown or bypass of pollution control equipment for their electric generating units operating in Puerto Rico. PREPA requested a NAA in order to assist PREPA with maintaining the supply of electricity to customers and critical facilities in Puerto Rico, and to facilitate the expeditious restoration of lost electrical service caused by Hurricanes Irma and Maria. Today, the conditions on October 6, 2017 persist in portions of Puerto Rico, and PREPA's NAA request letter estimates that approximately 6% of PREPA's customers continue to lack electric service. Accordingly, the basis and need for an NAA to both address operational issues faced by PREPA and the need to facilitate PREPA's efforts to restore the provision of electrical power to Puerto Rico continue.

PREPA has also previously stated that the ongoing restoration of PREPA's power grid continues to require PREPA to detail the personnel responsible for meeting reporting obligations to operational divisions. PREPA has also said that continuing communications problems in Puerto Rico also make it difficult to timely gather and supply the information required in the reports. Recently, PREPA has reiterated that many of its compliance personnel continue to be deployed for operational work, though some are transitioning back to their normal responsibilities; these latter personnel will then face a reporting backlog. The EPA is mindful of these continuing difficulties, and EPA expects that continuing the previously provided relief in this NAA will facilitate PREPA's expeditious restoration efforts and efforts to return to normal reporting.

In light of the existing emergency in Puerto Rico, the EPA will continue to exercise its discretion not to pursue enforcement for violations of Title V permit requirements and the underlying requirements contained therein, at PREPA's electric generating units¹ located in Puerto Rico, if units at those generating stations are unable to comply due to impacts from Hurricanes Irma and Maria. The violations for which this exercise of enforcement discretion applies are the (1) violations and (2) actions taken, or not taken, in response to the conditions listed below:

- Emissions limits (including but not limited to opacity limits) at the Aguirre facility from operating the Aguirre facility at low load output levels;
- Emissions limits (including but not limited to opacity limits) at PREPA's electric generating units other than Costa Sur and Cambalache, related to episodic electrical disturbances;
- Operation in excess of heat input limits at San Juan units 7 and 8, and Palo Seco unit 1;
- Unit and/or control equipment malfunctions, shutdowns or restarts, except at Costa Sur and Cambalache;
- Inoperable or damaged process, production, control or monitoring equipment (excluding all fuel analysis activities) at Aguirre unit 1; inoperable or damaged water injection equipment at the Mayaguez facility, to the extent caused by electrical disturbances; and inoperable or damaged steam injection equipment at San Juan units 5 and 6, to the extent caused by electrical disturbances;
- Compliance with the Mercury and Air Toxics Standard (MATS) as follows:
 - Heat input limits at San Juan units 7 and 8 and Palo Seco unit 1;
 - MATS compliance at Aguirre;
 - Emissions deviations resulting from cycling problems at plants subject to MATS, other than Costa Sur; and
 - MATS testing deadlines at Aguirre Units 1-2, Costa Sur Units 5-6, San Juan Unit 9, and Palo Seco Unit 3;
- Temporary operation of mobile diesel generators to restore power and start units and auxiliary equipment; and

¹ PREPA's generating units are Aguirre Power Station (PFE-TV-4911-63-0212-0244), Palo Seco Steam Power Plant (PFE-TV-4911-70-1196-0015), South Coast Steam Power Plant (TV-4911-31-0397-0021), San Juan Steam Power Plant (PFE-TV-4911-65-1196-0016), Cambalache Combustion Turbine Plant (PFE-TV-4911-07-0897-0043), Daguaio Turbine Power Block (PFE-TV-4911-19-0306-0447), Jobos Turbine Power Block (PFE-TV-4911-30-1107-0991), Mayaguez (TV-4911-63-1196-0014), Vega Baja Turbine Power Block (PFE-TV-4911-74-0106-0021), and Yabucoa Gas Turbine Power Block (PFE-TV-4911-77-0707-0759).

- The shutdown or bypass of air pollution control equipment to shed parasitic load at Mayaguez and San Juan, to the extent problems are due to electrical disturbances.

EPA will also continue to exercise its discretion not to pursue enforcement for violations of the following reporting requirements, if PREPA is unable to comply with these requirements due to impacts from Hurricanes Irma and Maria or efforts to recover from hurricane impacts:

- Failure to comply with reporting deadlines for the reports listed in Table A below. These reporting deadlines, as identified in Table A, come from PREPA's Prevention of Significant Deterioration ("PSD") permits; the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (the RICE NESHAP); the Mercury and Air Toxics Standards rule ("MATS"); the Greenhouse Gas Reporting Rule; and PREPA's Title V permits. If PREPA identifies additional Clean Air Act reporting deadlines that it cannot meet due to hurricane recovery efforts, it must notify EPA at least 3 days before the report(s) would be due.

Table A: PREPA Reporting Requirements

<u>Report</u>	<u>Facilities</u>	<u>Legal Source(s)</u>
Semi-Annual Monitoring Report	Aguirre, Costa Sur, Palo Seco, San Juan, Cambalache, Mayaguez, Daguao, Jobos, Vega Baja, Yabucoa	Title V permits
Annual Compliance Certification Report	Aguirre, Costa Sur, Palo Seco, San Juan, Cambalache, Mayaguez, Daguao, Jobos, Vega Baja, Yabucoa	Title V permits
Annual GHG Emissions Report	All subject facilities	GHG Reporting Rule (Part 98) Title V permits
Quarterly Excess Emissions & Method 9 Report	Aguirre, Palo Seco	Title V permits
Quarterly Excess Emissions Report	San Juan, Cambalache, Costa Sur	PSD permits
Quarterly Excess Emissions & Monitoring Report	Costa Sur, Palo Seco, San Juan, Aguirre	MATS
Semi-Annual Excess Emissions Report	Costa Sur, Palo Seco, San Juan, Aguirre	MATS
Monthly Vanadium/Asphaltene Report	Aguirre, Costa Sur, Palo Seco, San Juan, Cambalache, Mayaguez, Daguao, Jobos, Vega Baja, Yabucoa	Title V permits
Annual Emergency Generator Compliance Report	Costa Sur, Aguirre, San Juan, Palo Seco, Mayaguez, Jobos	Rice NESHAP (Subpt. ZZZZ)

<u>Report</u>	<u>Facilities</u>	<u>Legal Source(s)</u>
		Title V permits
Semi-Annual Emergency Generator Compliance Report	Palo Seco, Yabucoa	RICE NESHAP (Subpt. ZZZZ)
		Title V permits
Semi-Annual Heat Input Report	Costa Sur	PSD permits
Quarterly QA/QC Report (CEMS-O2-NOx-CO)	San Juan, Cambalache	PSD permits
QA/QC Quarterly Report (PM CEMS-Stack O2)	Costa Sur, Palo Seco, San Juan	MATS
Annual Relative Accuracy Test Audit Report (Stack O2)	Costa Sur, Palo Seco, San Juan	MATS
Annual Relative Response Audit Report	Costa Sur, Palo Seco, San Juan	MATS
Tri-Annual Relative Correlation Audit Report	Costa Sur	MATS
Annual RATA Report (CEMS-O2-NOx-CO)	San Juan, Cambalache	PSD permits

Pursuant to this NAA, the EPA will not enforce the violations described above, subject to the following conditions:

1. Electric generating units owned/operated by PREPA must comply with any and all conditions set forth in Puerto Rico Referendum 17-22, 17-31 and its successors, if any, or other requirements or conditions set forth by Puerto Rico or local authorities;
2. Electric generating units owned/operated by PREPA must promptly return to normal operations as soon as practicable;
3. PREPA shall make all reasonable efforts to submit reports in a timely manner when possible, even during the duration of this NAA;
4. PREPA shall notify EPA, on a facility-by-facility basis, when power generation and electricity distribution have stabilized and facility personnel have generally returned to non-emergency responsibilities;
5. It is EPA's understanding that PREPA does not expect to need an additional extension of this NAA after April 30, 2018. However, if that is not the case, PREPA must request any additional, narrow extension by April 23rd. Such extension shall be supported with appropriate justification, including but not necessarily limited to the following items:
 - a. Description of any noncompliance, as well as progress made and actions taken to address any noncompliance covered by this NAA and to return to compliance (to the extent possible or practicable under the circumstances);

- b. Description of any anticipated continued noncompliance beyond the termination date of this NAA, together with the anticipated duration of such noncompliance and planned measures to be taken to return to compliance, or impediments thereto; and
 - c. Description of the nature and extent of the work performed by those personnel, who would otherwise be responsible for meeting reporting and any other obligations covered by this NAA, to restore the provision of power services to Puerto Rico.
6. As soon as practicable after the termination of this NAA, PREPA shall notify the EPA (as provided below) of any exceedances or unpermitted activities implemented in response to Hurricanes Irma and Maria. This notification should include a detailed description (e.g., cause, duration, quantity of excess emissions) and supporting documentation that each exceedance or activity was essential to provide electric service to customers;
7. All reports in Table A that are due during the effective period of this NAA shall be submitted no later than 30 calendar days after the expiration of this NAA. Each late report shall contain an explanation of why that report could not be submitted on time and/or why certain monitoring, calibrating or recordkeeping information necessary for the report is not available; and
8. Any maintenance and repairs performed outside of the NAA period and/or outside of damage caused by Hurricanes Irma and Maria shall not be covered by the NAA and will be subject to Clean Air Act requirements as appropriate.

The notifications identified above should be sent to the EPA via email to Gregory Fried, at fried.gregory@epa.gov.

The issuance of an NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by Hurricanes Irma and Maria. Nothing in this NAA is intended to override state or local authorities.

The NAA terminates at 11:59 PM AST, April 30, 2018. The EPA reserves the right to extend, revoke or modify the NAA if the EPA believes that such action is necessary to protect public health and the environment. This NAA does not apply to any other federal requirements that may apply to regulated activities at these facilities other than those listed above.

Nothing in this exercise of enforcement discretion relieves any person of the obligation under law, if any, to report emissions from the operation of equipment covered by this action. If you have any questions please contact Phillip A. Brooks, at 202-564-0652 or brooks.phillip@epa.gov.

Sincerely,

Susan Parker Bodine

cc: Peter D. Lopez, Regional Administrator, EPA Region 2